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Arnold Schwarzenegger
Governor

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LG LETTER 164

REPORTING OF SIGNIFICANT OPERATIONAL COMPLIANCE

(Available electronically through links at <http://www.swrcb.ca.gov/ust>)

To: Local Agencies

Purpose

This LG letter is to discuss USEPA's changes to the reporting of significant operational compliance (SOC) of underground storage tank (UST) facilities, which become mandatory on October 1, 2004. USEPA uses SOC numbers to assess compliance rates nationwide. SOC is not intended to be an enforcement tool for inspectors, nor is it a "report card" to assess local agency or State performance.

Background

Until recently, USEPA required States to report the number of facilities inspected during the quarter that are in SOC with: (1) Leak Detection Requirements and (2) 1998 Upgrade Requirements. As you know, the State Water Resources Control Board (SWRCB) collects this information from local agencies through the Unified Program Report 6 and compiles a statewide report to be submitted to USEPA.

USEPA's Changes to SOC Reporting

USEPA has changed the names of the SOC measures to, respectively: (1) Release Detection Requirements and (2) Release Prevention Requirements. In addition, USEPA has added a measure to report the number of facilities inspected during the quarter that are in SOC with (3) both Release Detection and Release Prevention Requirements. Finally, USEPA provided two matrices that contained specific requirements to be used in assessing SOC.

California's Responses to USEPA's Changes

Beginning in the Spring of 2003, we have communicated to you USEPA's plans to change the SOC measures, through discussions with the CUPA Forum Board and through presentations to inspector groups. Knowing that the USEPA matrices were based on the Federal requirements, we prepared a California version of the matrices (see Enclosure 1) and circulated them for review through the CUPA Forum Board Issue Coordinator. Our communication to you on October 2, 2003 (see Enclosure 2) announced the changes and transmitted the relevant documents.



Scope of SOC Reporting

In view of the fact that the purpose of SOC is to assess nationwide compliance with the Federal program, the determination of what violation would be “significant” was based on Federal requirements. As stated previously, we prepared a California version of the “significant” Federal requirements. Even though certain California-only requirements may be “significant” to our program, they may not appear on the SOC matrices if there is no equivalent requirement in the Federal program.

USEPA has clarified that SOC should be determined based on the condition of the site when the inspector begins the compliance inspection. Even if a violation is corrected while the inspector is conducting the inspection, the facility would not be in SOC because it was not in SOC at the beginning of the inspection. For example, if at the time of the initial inspection, certain leak detection equipment is discovered to be non-operational yet is fixed or replaced during the inspection, the facility is not in SOC for reporting purposes. USEPA has made it clear that the facility must be in compliance with all relevant SOC items to be counted as “in SOC.”

When determining compliance rates, a facility that does not comply with an SOC element on one matrix, but is in full compliance on the other matrix, will only be counted as being in SOC with the matrix in which that facility has met every element. If the facility does not meet every element on both the release detection and release prevention matrices, the facility will not be counted as being “in SOC” for the combined measure.

Please do not confuse “significant operational compliance” with the term “significant violation” as used with regard to red tags. Although the word “significant” is used in both phrases, they are two separate concepts. One is a measure of compliance for tracking purposes and the other is a determination of the severity of a violation for enforcement purposes. It is the violations specified in the red tag regulations, not SOC measures, that are the basis for affixing red tags.

Timing of SOC Reporting

As announced on October 2, 2003, the revised matrices become mandatory for inspections during the quarter beginning October 1, 2004. Due to the time lag in reporting, local agencies will report these results to the SWRCB during January, 2005.

Next Steps

USEPA’s revised SOC reporting requirements require a change to Unified Program Report 6 and possibly to the Title 27 data dictionary. At the request of the CUPA Forum Board, we are planning to combine the SOC rulemaking with Cal/EPA’s other planned changes to Title 27 reporting. We are working with Cal/EPA to include our changes in their regulatory package, but this process will not be completed until well after October 1, 2004.

In the meantime, we recommend that you continue to use the modified Unified Program Report 6 as well as the enclosed California-specific matrices detailing the SOC changes.

If you have questions regarding this letter, please contact Julie Berrey at (916) 341-5872 or berreyj@swrcb.ca.gov. If you have any questions regarding the rulemaking, please contact Ahmad Kashkoli at (916) 341-5855 or kashkola@swrcb.ca.gov.

Sincerely,

[Original Signed By]

Elizabeth L. Haven, Manager
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Enclosures

cc: Steven Linder, US EPA Region 9
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